



Appeal Decision

Site visit made on 9 December 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal Ref: APP/U5360/W/24/3349348

2-16, Bayford Street, Hackney, London, E8 3SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by WG London Property Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/0913.
 - The application sought planning permission for the demolition of existing buildings and construction of a 6-8 storey building with basement to accommodate 38 residential units and commercial space (use class B1) along with amenity areas, access and servicing, cycle parking and refuse/recycling stores without complying with a condition attached to planning permission Ref 2018/2948, dated 8 June 2020.
 - The condition in dispute is No 1 which states that: The Development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.
 - The reason given for the condition is: To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted under reference 2018/2948 for the demolition of existing buildings and the erection of a 6-8 storey building consisting of 38 residential properties with commercial space to the lower floors. This included, at condition 1, a restriction that required the development to be carried out and completed strictly in accordance with the submitted plans and any subsequent approval of details. Application reference 2023/0913, submitted under Section 73 of the Town and Country Planning Act 1990, sought to vary condition 1 to amend the plans to include the erection of roof extensions, railings, soft planting and a paddling pool to provide communal amenity space at roof level.
3. The main issue is whether the proposed development would maximise opportunities for renewable energy and increase the embodied and operational carbon of the development.

Reasons

4. Policy LP55 of the Hackney Local Plan 2033 (HLP) requires that all new developments must actively seek to mitigate the impact of climate change through design which minimises exposure to the effects, and technologies

which maximises sustainability. Policy SI 2 of the London Plan 2021 (LonP) seeks to maximise opportunities for renewable energy by producing, storing and using renewable energy on site.

5. The proposal would allow for the use the roof of the building as a communal space for residents and includes a swimming pool. The proposed communal space would reduce the area on the roof that could be used for renewable energy generation, including solar photovoltaic (PV) panels. The approved scheme required compliance with an Energy Statement¹ and the approved plans. While the approved plans do not include details relating to the siting of solar photovoltaic panels, condition 9 requires that no roof plant, including all external enclosures, machinery and other installations shall be attached to the roof or other surfaces of the building unless otherwise approved by the Council. There is no substantive evidence before me that details have been approved in respect of this condition.
6. The Energy Statement for the approved scheme specified that the development would have an annual solar PV generation of 26,996 kWh for the domestic element and an annual solar PV generation of 15,864 kWh for the non-domestic element of the development. Nevertheless, the statement and approved plans do not demonstrate how the scheme would achieve these figures.
7. The Addendum Energy Strategy Report² submitted as part of the appeal scheme states that scheme could have a solar PV generation, taking into account the proposed communal space and swimming pool, of 33.62kWp. The Designer Report³ submitted with the appeal indicates that the proposed solar PV installation could achieve a maximum of 42.53kWp under optimal conditions. Nevertheless, the Designer Report states that this would lead to an annual solar PV production of 23.28MWh, which would be considerably below the stated annual solar PV generation figure within the approved Energy Statement. While the information supporting the solar PV generation figures within the original Energy Statement is limited, the communal space and swimming pool would utilise a substantial proportion of the main part of the roof. Consequently, this would reduce the potential for solar PV generation at the site, and the proposal would therefore fail to maximise the opportunities for renewable energy.
8. The proposal includes additional built form at rooftop level to provide a pavilion, in addition to the swimming pool and communal space. The scale of the pavilion and swimming pool is limited in comparison to the rest of the development. Nonetheless, the appellant acknowledges that these additional features would generate more embodied carbon. Moreover, the swimming pool and pavilion may generate more operational carbon through the use of associated plant and machinery.
9. I conclude that the proposal would not maximise opportunities for renewable energy and would increase the embodied and operational carbon of the development. The proposal therefore conflicts with Policy LP55 of the HLP and Policy SI 2 of the LonP as set out above.

¹ Dated 8 May 2019, produced by Pick Everard

² Dated November 2023, produced by Mendick Waring Limited

³ Dated 8 February 2024, produced by SolarEdge

Other Matters

10. The appellant obtained pre-application advice, and the proposal has been amended since the refusal of an earlier scheme. Whilst renewable energy was not raised as an issue within the previous decision, it is noted that the Council considered that an Energy Statement was necessary. Although pre-application advice is a useful tool to enable an early understanding of the potential issues of a proposal, this is not a guarantee of planning permission at a later date. Moreover, this does not affect the material planning considerations of the case. I have considered the proposal on its own merits.
11. The proposal would provide communal space and facilities for residents of the development. In this respect, the proposal would accord with Policy LP48 of the HLP, which encourages private and communal garden space for future residents. Whilst the communal space and swimming pool would represent a benefit to residents of the development, it is noted that private space is already provided and the requirements of Policy LP48 post-date the original planning permission. Consequently, the limited benefit of the communal space and facilities would not outweigh the harm identified.

Conclusion

12. The proposal conflicts with the development plan as a whole. The material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

J Pearce

INSPECTOR